

SANBAG Contract No. 06-058

by and between

San Bernardino Associated Governments

and

State of California, Department of Transportation

for

Cooperative Agreement for I-215, Segment 2 Right of Way Work**FOR ACCOUNTING PURPOSES ONLY**

<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable	Vendor Contract # <u>08-1306</u>	Retention: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Original <input type="checkbox"/> Amendment
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Notes:

Original Contract: \$ 23,829,210

Previous Amendments Total: \$ _____

Previous Amendments Contingency Total: \$ _____

Contingency Amount: \$ _____

Current Amendment: \$ _____

Current Amendment Contingency: \$ _____

Contingency Amount requires specific authorization by Task Manager prior to release.

Contract TOTAL →**\$ 23,829,210**

Please include funding allocation for the original contract or the amendment →

Task	Cost Code	Funding Sources	Amounts
1 <u>83607000</u>	<u>5580</u>	1 <u>CMAQ</u>	\$ <u>12,000,000</u>
2 <u>83607000</u>	<u>5580</u>	2 <u>Meas. I Valley Major Projects</u>	\$ <u>1,554,727</u>
3 <u>83608000</u>	<u>5580</u>	3 <u>CMAQ</u>	\$ <u>9,096,000</u>
4 <u>83608000</u>	<u>5580</u>	4 <u>Meas. I Valley Major Projects</u>	\$ <u>1,178,483</u>

Original Board Approved Contract Date: 04/05/06 Contract Start: 04/05/06 Contract End: 6/30/10

New Amend. Approval (Board) Date: _____ Amend. Start: _____ Amend. End: _____

If this is a multi-year contract/amendment, please allocate costs among fiscal years:Fiscal Year: 06/07Fiscal Year: 07/08

Fiscal Year: _____

\$ 13,554,727\$ 10,274,483

\$ _____

Is this consistent with the adopted budget? ☐ Yes ☒ NoIf no, has the budget amendment been submitted? ☒ Yes ☐ No**CONTRACT MANAGEMENT****Please mark an "X" next to all that apply:**☒ Intergovernmental ☐ Private ☐ Non-Local ☐ Local ☐ Partly LocalDisadvantaged Business Enterprise: ☐ No ☐ Yes _____%Task Manager: **Darren Kettle**Contract Manager: **Dennis Saylor**

Task Manager Signature

Date

Contract Manager Signature

Date

Chief Financial Officer Signature

Date

08-SBd-215-PM 7.6/8.9
Add 2 HOV Lanes and
Operational Improvements
South of 9th Street OC to
South of Massachusetts Street
(Segment 2)
In the City of San Bernardino
EA 007161
District Agreement No. 8-1306

RIGHT OF WAY
COOPERATIVE AGREEMENT

This AGREEMENT, entered into effective on May 30, 2006, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and the

SAN BERNARDINO ASSOCIATED
GOVERNMENTS, a public entity, referred to
herein as "SANBAG."

RECITALS

1. STATE and SANBAG, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to State Highways within the County of San Bernardino.
2. STATE is authorized to do all acts necessary, convenient or proper for the construction or improvement of all highways under its jurisdiction, possession or control.
3. STATE and SANBAG contemplate the purchase of right of way for the widening of Interstate 215 (I-215) to provide for one (1) High Occupancy Vehicle (HOV) lane and one (1) mixed-flow lane in each direction and operational improvements including auxiliary lanes and braided ramps on I-215 in the City of San Bernardino from south of 9th Street overcrossing to south of Massachusetts Avenue (Segment 2), referred to herein as "PROJECT."
4. SANBAG is willing to pay for right of way capital costs for PROJECT up to a maximum amount of \$23,829,210 by direct billing. A list of anticipated parcels to be acquired is attached as Attachment 1. This list of parcels is given for reference but is not meant to be exclusive of other high priority parcels that may be required on an urgent basis.

5. STATE will provide right of way support at no cost to SANBAG.
6. The parties hereto intend to define herein the terms and conditions under which right of way for PROJECT will be performed and financed.
7. SANBAG intends to seek Congestion Mitigation and Air Quality (CMAQ) reimbursement for work as it is completed. SANBAG will use Measure I funding for the direct billing by STATE and seek CMAQ reimbursement for these expenditures less the local match portion.

SECTION I

STATE AGREES:

1. To perform all right of way activities including preparation of right of way maps and legal descriptions. Said right of way activities shall include but not be limited to the following:
 - a. Prepare fair market value appraisals and relocation valuations.
 - b. Acquire property in STATE's name.
 - c. Provide required relocation assistance payments and service.
 - d. Open escrow, obtain title reports, and make arrangements to convey title and close escrow.
 - e. Complete acquisition through condemnation as required.
 - f. Provide all property management services.
 - g. Administer excess land program.
 - h. Provide for utility relocation.
2. To perform all right of way support for acquisition activities of properties as may be necessary for the construction of PROJECT at no cost to SANBAG.
3. To provide legal services in connection with eminent domain actions. All eminent domain proceedings are dependent upon the adoption of a resolution of public use and necessity by the California Transportation Commission (CTC). STATE shall pursue such actions according to current STATE procedures under the passage of a condemnation resolution by the CTC.
4. To consider approval of San Bernardino Board of Supervisors request for SANBAG to hear and adopt resolutions of necessity on all remaining parcels on PROJECT.
5. To certify legal and physical control of right of way acquired in accordance with applicable State and Federal laws and regulations, prior to advertisement for bids for construction of PROJECT.
6. To identify and locate all utility facilities within the area of PROJECT as part of the right of way responsibility of PROJECT. All utility facilities not relocated or removed in advance of construction shall be identified on the Plans, Specifications, and Estimate

(PS&E) for PROJECT.

7. To identify and locate all high and low risk underground facilities within the area of PROJECT and to protect or otherwise provide for such facilities, all in accordance with STATE's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way."
8. If any existing public and/or private utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, STATE shall make all necessary arrangements with the owners of such facilities for their protection, relocation, or removal in accordance with STATE's policy and procedure for those facilities located within the limits of work included in the improvement to the State Highway and in accordance with applicable local jurisdiction's policy for those facilities which are or will be located outside of the limits of the State Highway. The total PROJECT costs of such protection, relocation, or removal within the present or future State Highway right of way shall be determined in accordance with STATE's policies and procedures.
9. To establish separate PROJECT accounts to accumulate charges for all costs to be paid by SANBAG pursuant to this Agreement.
10. To prepare and submit to SANBAG a request for payment for the capital costs of right of way to be paid by SANBAG as required for right of way acquisition activities as described in Section II, Article 1 as PROJECT proceeds. A request for payment should be on a mutually agreed to form.
11. To submit to SANBAG a monthly progress report that describes the work performed and completed during the reporting period.
12. Upon completion of the right of way activities for PROJECT and all work incidental thereto, to furnish SANBAG with a detailed statement of the total actual right of way acquisition capital costs for PROJECT.
13. To inform SANBAG of any issues that could have the potential to increase the actual right of way cost for PROJECT beyond the authorized cost.
14. To retain, or cause to be retained for audit by SANBAG auditors, for a period of three (3) years from date of processing the final detailed statement of PROJECT, all records and accounts relating to right of way for PROJECT, and make such materials available if required by SANBAG.

SECTION II

SANBAG AGREES:

1. To pay one hundred percent (100%) of the total actual right of way acquisition cost for PROJECT, up to a maximum of \$23,829,210. If it becomes apparent that the total maximum cost for right of way for PROJECT will exceed the maximum amount

programmed for expenditure, SANBAG shall work promptly and in cooperation with STATE to determine necessary additional costs and the source of the additional funds.

2. To deposit into an escrow account, mutually agreeable to the STATE, within ten (10) working days of receipt of request for payment, the capital cost of right of way to be paid by SANBAG as required for right of way activities as described in Section 1, Article 1 as PROJECT proceeds.
3. To provide STATE with a certificate of funding which shall be attached hereto and made a part of this Agreement. This certificate shall indicate that funds are available and budgeted for payment to STATE and shall be executed by the designated responsible fiscal officer of SANBAG.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of funds by the CTC.
2. Should any portion of PROJECT be financed with Federal funds or STATE funds, all applicable laws, rules and policies relating to the use of such funds shall apply notwithstanding other provisions of this Agreement.
3. (a). In the acquisition of right of way pursuant to this Agreement, STATE may acquire at SANBAG's expense an entire parcel, or a greater portion of a parcel than that required for PROJECT, of real property to avoid payment of high severance damages. Any such acquired excess properties shall be disposed of in accordance with STATE's standard operating procedures. All net proceeds received from the disposal of said excess properties shall be transferred to SANBAG.

(b). Notwithstanding Paragraphs 3 (a) and 3 (c) of this section, the existing I-215 State-owned right of way will be incorporated as necessary into the PROJECT right of way at no cost to SANBAG. Existing State-owned right of way, which becomes excess as a result of PROJECT will, subject to CTC approval, be exchanged if appropriate for private-owned required property.

(c). Excess existing State-owned property within PROJECT limits not exchanged and/or incorporated shall be, subject to CTC approval, conveyed or sold by the State with the transfer or credit of said property to STATE. The disposal of said excess property will be in accordance with the provisions of this Agreement.
4. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the

construction of State Highways different from the standard of care imposed by law.

5. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by SANBAG under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that SANBAG shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by SANBAG under this Agreement.
6. Neither SANBAG nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless SANBAG and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
7. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
8. This Agreement shall terminate upon the completion of the right of way acquisition activities for PROJECT or on June 30, 2010, whichever is earlier in time.

SIGNATURES ON FOLLOWING PAGE:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

SAN BERNARDINO ASSOCIATED
GOVERNMENTS

WILL KEMPTON
Director

By: Kelly Chastain
~~MARK ANTHONY GRASSO~~
~~Executive Director~~ KELLY CHASTAIN
Board of Directors

By: Michael A. Perovich
MICHAEL A. PEROVICH
cc District Director

Attest: Vicki Watson
VICKI WATSON
Board Secretary

APPROVED AS TO FORM AND
PROCEDURE:

By: William B. Smith
Attorney,
Department of Transportation

By: Jean-Rene Basle
JEAN-RENE BASLE
SANBAG Counsel

CERTIFIED AS TO FUNDS:

By: Richard A. Pitts
District Budget Manager

CERTIFIED AS TO FINANCIAL
TERMS AND POLICIES:

By: Judith K. Jarama
Accounting Administrator

ATTACHMENT 1

E.A. 007161

PARCEL NOS.	GRANTORS	ACQUISITION AMOUNT	RELOCATION AMOUNT	DEMOLITION AMOUNT	TOTAL AMOUNT	
17870	Acquiport 11 Limited Partnership	\$4,148,425.00	\$250,000.00	\$150,000.00	\$4,548,425.00	B
17882	Orosco	\$4,125.00	\$0.00	\$0.00	\$4,125.00	R
17890	Pacheco	\$425,310.00	\$30,000.00	\$20,000.00	\$475,310.00	R
17905	Barrera	\$4,750.00	\$0.00	\$0.00	\$4,750.00	R-TCE
17914	Pardo	\$461,035.00	\$120,000.00	\$40,000.00	\$621,035.00	R
17918	Villegas	\$513,775.00	\$90,000.00	\$40,000.00	\$643,775.00	Dec 2001
17925	City of San Bernardino	\$3,395,925.00	\$75,000.00	\$60,000.00	\$3,530,925.00	B
17926	Janet L. Gale Hubbard	\$1,393,000.00	\$50,000.00	\$50,000.00	\$1,493,000.00	B
17927	Bollinger	\$780,925.00	\$100,000.00	\$50,000.00	\$930,925.00	B
17929	Janet L. Gale Hubbard	\$1,509,625.00	\$50,000.00	\$50,000.00	\$1,609,625.00	B
18538	Peter Gonzales	\$276,920.00	\$30,000.00	\$20,000.00	\$326,920.00	R
19158	Summers	\$4,750.00	\$0.00	\$0.00	\$4,750.00	R-TCE
19159	Summers	\$4,750.00	\$0.00	\$0.00	\$4,750.00	R-TCE
19160	Brickley	\$13,500.00	\$0.00	\$0.00	\$13,500.00	R-TCE
19161	Tristar Holding	\$3,297,369.00	\$200,000.00	\$100,000.00	\$3,597,369.00	B
19163	Weisz	\$194,750.00	\$0.00	\$5,000.00	\$199,750.00	B
19165	Salvation Army	\$0.00	\$0.00	\$0.00	\$0.00	
19167	Rojas	\$4,125.00	\$0.00	\$0.00	\$4,125.00	R
19171	Cocroft	\$4,125.00	\$0.00	\$0.00	\$4,125.00	R
19174	Roberts	\$4,125.00	\$0.00	\$0.00	\$4,125.00	R
19177	Aratex Services, Inc.	\$2,186,250.00	\$100,000.00	\$100,000.00	\$2,386,250.00	B
19179	Fawaz	\$26,000.00	\$0.00	\$0.00	\$26,000.00	B
19180	Walker	\$4,750.00	\$0.00	\$0.00	\$4,750.00	R-TCE
19181	Acquiport	\$38,500.00	\$0.00	\$0.00	\$38,500.00	B
19182	Atlantic Richfield Co.	\$38,500.00	\$0.00	\$0.00	\$38,500.00	B-TCE
19183	Harris Street Properties	\$4,750.00	\$0.00	\$0.00	\$4,750.00	B-TCE
19184	San Bernardino City USD	\$6,625.00	\$0.00	\$0.00	\$6,625.00	B-TCE
19185	Nelson Trust	\$531,688.00	\$30,000.00	\$50,000.00	\$611,688.00	B
20018	AT&SF	\$0.00	\$0.00	\$0.00	\$0.00	- AJK
20099	W. Virginia Trust	\$42,563.00	\$0.00	\$0.00	\$42,563.00	R
20100	Robinett	\$42,563.00	\$0.00	\$0.00	\$42,563.00	R
TOTAL		\$19,363,498.00	\$1,125,000.00	\$735,000.00	\$21,223,498.00	

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 22

Date: May 3, 2006

Subject: Cooperative Agreement No. 06-058 with Caltrans for Interstate 215 Segment 2 Right of Way Acquisition

Recommendation: Approve Cooperative Agreement No. 06-058 with Caltrans for Interstate 215 Segment 2 Right of Way Acquisition.

Background: This is a new cooperative agreement. Caltrans is the lead agency for the purposes of Right of Way Acquisitions for the I-215 project and has already started acquiring properties in both segments 1 and 3. Consistent with SANBAG Board Policy to place all federal local assistance funds on Measure I Major Projects, SANBAG, through Cooperative Agreements 04-059 and 04-060 has agreed to use Congestion Mitigation Air Quality (CMAQ) funds along with Measure I funds for local match purposes to partially fund acquisition in segments 1 and 3. Other funding sources include Regional Improvement Program funds programmed in prior years and the balance of acquisitions will be funded from Measure I Major Projects funds.

Cooperative Agreement No. 06-058 is substantively identical to the prior agreements approved by the Board and applies to segment 2 of Interstate 215 which is generally between 9th and 16th Street. Caltrans will perform all right of way acquisition services and acquire property in the name of the State. Upon request by Caltrans, SANBAG will deposit into escrow the funds to acquire subject properties that are necessary for the expansion of the I-215 freeway. As is the case with agreements for Segments 1 and 3, the funding source will be CMAQ funds and the necessary Measure I local match. The agreement recognizes that as much as \$21.1 million of CMAQ funding combined with a local match of \$2.7 for a total of \$23.8 million will be made available for right of way acquisition.

Approved Consent

Approved
Board of Directors

Date: May 3, 2006

Moved: Yates

Second: Pomierski

In Favor: 23 Opposed: 0 Abstained: 0

Witnessed: Anna Aldern

Board Agenda Item
May 3, 2006
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Financial Impact: The cooperative agreement expenditure totals \$23,829,210 million and includes both CMAQ funds and Measure I Major Project funds necessary to meet the local match requirement. A budget amendment is not necessary as all expenditures are anticipated in future fiscal years and will be budgeted accordingly in the proposed FY 2006/2007 Budget currently under development and the FY 2007/2008 Budget, TN 0625300.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Major Projects Committee on March 9, 2006.

Responsible Staff: Darren Kettle, Director of Freeway Construction